

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

: CRIMINAL

NO. _____

v.

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MARK RUBIN, R.PH.

BRUCE GOLDBERG, R.PH.

DATE FILED: _____

VIOLATIONS: 18 U.S.C. § 371

**(conspiracy to commit health care fraud- 1
count)**

21 U.S.C. §§ 331(t), 333(b)(1)(B), and 353(c)

**(illegal sale of prescription drug samples - 2
counts)**

Notice of forfeiture

Notice of additional factors

INFORMATION

COUNT ONE

THE UNITED STATES ATTORNEY CHARGES THAT:

At times material to this information:

DRUG SAMPLES

1. The term "drug sample" means a unit of a prescription drug which is not intended to be sold and is intended to promote the sale of the drug. 21 U.S.C. §353(c).

2. Under the Prescription Drug Marketing Act ("PDMA"), 21 U.S.C. §353(d), a manufacturer or distributor of a prescription drug may distribute prescription drug samples without charge to a licensed practitioner, or to the pharmacy of a hospital, or another health care entity at the request of a licensed practitioner. Prescription drug samples are not to be delivered to retail pharmacies for sale to consumers. Under the PDMA, no person may sell, purchase, or trade or offer to sell, purchase, or trade a drug sample. 21 U.S.C. § 353(c)(1).

3. The PDMA was enacted for several reasons, one being that "[t]he existing system of providing drug samples to physicians through manufacturer's representatives has been abused for decades and has resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals." 21 U.S.C. §353 (note).

4. Defendant MARK RUBIN is a pharmacist licensed to practice pharmacy by the Commonwealth of Pennsylvania. Defendant RUBIN owned the Summerdale Pharmacy located at 90 East Sanger Street, Philadelphia, PA.

5. Defendant BRUCE GOLDBERG is a pharmacist licensed to practice pharmacy by the Commonwealth of Pennsylvania. Defendant GOLDBERG owned K & A Pharmacy located at 3210 Kensington Avenue, Philadelphia, PA and Marcus Foster Pharmacy-Tioga located at 1018 West Lehigh Avenue, Philadelphia, PA.

6. Defendants MARK RUBIN and BRUCE GOLDBERG dispensed drug samples to patients and then billed the patients' health insurance plans and third-party payers for reimbursement, or received cash, for those drug samples.

7. From on or about January 1997 to on or about September 20, 2000, in the Eastern District of Pennsylvania, defendants

**MARK RUBIN and
BRUCE GOLDBERG**

conspired and agreed together, and with others known and unknown to the United States Attorney, to commit an offense against the United States, that is, knowingly and willfully execute a scheme to defraud health care benefit programs, that is AdvancePCS and other third-party payers of prescription drug benefits, and to obtain money and property owned by and under

the custody and control of those health care benefit programs, by means of false and fraudulent pretenses, representations, and promises, in connection with the delivery of and payment for health care benefits, items and services, by submitting or causing to be submitted claims for prescription drug samples knowing that prescription drug samples were not to be dispensed and billed to third-party payers, in violation of 18 U.S.C. § 1347.

MANNER AND MEANS

It was part of the conspiracy that:

7. Defendants MARK RUBIN and BRUCE GOLDBERG approached physicians, pharmaceutical manufacturers' representatives and other pharmacists to buy, sell, and trade prescription drug samples, including samples that were near their expiration dates. Defendants RUBIN and GOLDBERG set the price for the prescription drug samples and paid the physicians, drug representatives and other suppliers in cash.

8. Once the defendants MARK RUBIN and BRUCE GOLDBERG obtained the prescription drug samples from the various suppliers, the samples were "punched out," that is, removed them from their unique individualized packaging, and were then placed into unmarked baggies for distribution.

9. Defendants MARK RUBIN and BRUCE GOLDBERG bought and sold prescription drug samples to and from each other, and to and from other pharmacists known and unknown to the United States Attorney. The purchase price was well below the amount that defendants RUBIN and GOLDBERG would have paid for the prescription drugs through the lawful wholesale distribution network.

10. Defendants MARK RUBIN and BRUCE GOLDBERG placed the illegally obtained prescription drug samples into their respective pharmacies' inventory, and dispensed the drug samples to unsuspecting patients.

11. Defendants MARK RUBIN and BRUCE GOLDBERG billed various third-party payers and insurance companies for dispensing the prescription drug samples to patients knowing that it was illegal to bill for these drug samples.

OVERT ACTS

In furtherance of the conspiracy, the defendants, and others known and unknown to the United States Attorney committed the following overt acts in the Eastern District of Pennsylvania:

12. In or about June 2000 through August 2000, defendant BRUCE GOLDBERG purchased tens of thousands of prescription drug samples, including Zyprexa and Risperdal, from a psychiatrist known to the United States Attorney, knowing that it was illegal to do so.

13. In or about June 2000 through August 2000, defendant MARK RUBIN obtained these prescription drug samples from defendant BRUCE GOLDBERG, "punched out" the samples, created a list of these drug samples, and set the sale price for the samples in conjunction with defendant BRUCE GOLDBERG.

14. In or about June 2000 through August 2000, defendant MARK RUBIN placed Zyprexa and Risperdal drug samples into the inventory at Summerdale Pharmacy, dispensed them to patients, and billed and received payment from various third-party payers for these drug samples.

15. In or about June 2000 through August 2000, defendant BRUCE GOLDBERG placed Zyprexa and Risperdal drug samples into the inventory at K&A Pharmacy, dispensed them to patients, and billed and received payment from various third-party payers for these drug samples.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. The allegations in paragraphs 1 through 4 in Count One are incorporated here.

2. From January 1993 to September 20, 2000, defendant MARK RUBIN purchased hundreds of thousands of prescription drug samples from physicians, pharmacists and various drug manufacturers' representatives on a regular basis. These prescription drug samples included, but were not limited to, Ambien, a Schedule IV controlled substance, Celebrex, Paxil, Prozac, Serzone, Biaxin, Augmentin, Zyprexa and Remeron.

3. Defendant MARK RUBIN sold, or caused to be sold, hundreds of thousands of prescription drug samples, including controlled and non-controlled substances. The drug samples were sold to other pharmacists or placed into the inventory of defendant RUBIN's pharmacy and sold to patients.

4. Defendant MARK RUBIN paid approximately \$500,000 to his drug sample suppliers for the prescription drug samples.

5. On or about September 14, 2000, in the Eastern District of Pennsylvania, defendant

MARK RUBIN

knowingly and unlawfully purchased, traded, sold, and offered to purchase, trade and sell, prescription drug samples.

In violation of Title 21, United States Code, Sections 331(t), 333(b)(1)(B), and 353(c)(1).

COUNT THREE

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. The allegations in paragraphs 1 through 3 and paragraph 5 in Count One are incorporated here.
2. From January 1998 to December 2000, defendant BRUCE GOLDBERG purchased hundreds of thousands of prescription drug samples from physicians, pharmacists and various drug manufacturers' representatives on a regular basis. The prescription drug samples included, but were not limited to, Celebrex, Paxil, Prozac, Risperdal, Zyprexa and Remeron.
3. Defendant BRUCE GOLDBERG sold, or caused to be sold, hundreds of thousands of prescription drug samples. The drug samples were sold or traded to other pharmacists or placed into the inventory of defendant GOLDBERG'S pharmacies and sold to patients.
4. Defendant BRUCE GOLDBERG paid approximately \$250,000 to his suppliers for the prescription drug samples.
5. On or about October 10, 2000, in the Eastern District of Pennsylvania, defendant

BRUCE GOLDBERG

knowingly and unlawfully purchased, traded, sold, and offered to purchase, trade and sell, prescription drug samples.

In violation of Title 21, United States Code, Sections 331(t), 333(b)(1)(B), and 353(c)(1).

NOTICE OF ADDITIONAL FACTORS

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. In committing the offense charged in Counts One and Two of this information, defendant MARK RUBIN:

a. Committed an offense in which the defendant abused a position of public and private trust, as described in U.S.S.G. §3B1.3.

b. Committed an offense in which the defendant used a special skill, in a manner that significantly facilitated the commission and concealment of the offense, as described in U.S.S.G. § 3B1.3.

c. Committed an offense in which the offense involved fraud and the loss exceeded \$500,000, as described in U.S.S.G. § 2F1.1(b)(1).

d. Committed an offense in which the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, as described in U.S.S.G. § 3B1.1.

e. Committed an offense that involved more than minimal planning and/or the scheme involved more than one victim, as described in U.S.S.G. § 2F1.1(b)(2).

NOTICE OF ADDITIONAL FACTORS

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. In committing the offense charged in Counts One and Three of this information, defendant BRUCE GOLDBERG:

a. Committed an offense in which the defendant abused a position of public and private trust, as described in U.S.S.G. §3B1.3.

b. Committed an offense in which the defendant used a special skill, in a manner that significantly facilitated the commission and concealment of the offense, as described in U.S.S.G. § 3B1.3.

c. Committed an offense in which the offense involved fraud and the loss exceeded \$350,000, as described in U.S.S.G. § 2F1.1(b)(1).

d. Committed an offense in which the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, as described in U.S.S.G. § 3B1.1.

e. Committed an offense that involved more than minimal planning and/or the scheme involved more than one victim, as described in U.S.S.G. § 2F1.1(b)(2).

NOTICE OF FORFEITURE

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. As a result of the violations of Title 18, United States Code, Sections 371 and 1347, set forth in this information, defendant

MARK RUBIN

shall forfeit to the United States of America any property that constitutes or is derived from gross proceeds traceable to the commission of such offenses, as charged in this information, including, but not limited to, the sum of \$ 225,000.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court; or
- (d) has been substantially diminished in value;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 18, United States Code, Section 982(a)(7).

NOTICE OF FORFEITURE

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. As a result of the violations of Title 18, United States Code, Sections 371 and 1347, set forth in this information, defendant

BRUCE GOLDBERG

shall forfeit to the United States of America any property that constitutes or is derived from gross proceeds traceable to the commission of such offenses, as charged in this information, including, but not limited to, the sum of \$ 225,000.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court; or
- (d) has been substantially diminished in value;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 18, United States Code, Section 982(a)(7).

**PATRICK L. MEEHAN
UNITED STATES ATTORNEY**

